

Transposition note for Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights(OJ No L 265, 11.01.2011, p.1) (“the Directive”)

Directive 2006/116/EC on the term of protection of copyright and certain related rights (O.J. L. 372, 27.12. 2006, p.12) is a codification of Council Directive 93/98/EEC of 29 October 1993 (as amended) which harmonised the term of protection of copyright and certain related rights. Directive 2006/116/EC is implemented into UK law by provisions contained in the Copyright, Designs and Patents Act 1988 (“the Act”).

The Directive amends Directive 2006/116/EC by extending the term of copyright and related rights for producers and performers in a sound recording from 50 to 70 years and other, permanent, benefits to performers which are exercisable during the extended term of copyright. The Directive also harmonises the period of copyright protection for musical works with words where the music and lyrics are written specifically for each other.

The relevant provisions of the Directive will be transposed into UK law by the Copyright and Duration of Rights in Performances Regulations 2013 (“the Regulations”) which amend the Act as set out in the table below. The Department for Business, Innovation and Skills has lead responsibility for implementation of the Directive.

Article of the Directive	Objectives	Implementation in the Regulations	Responsibility (Secretary of State if not specified)
Article 1 (1)	Provides that the term of copyright protection for a musical composition with words shall expire 70 years after the death of the last surviving author of the musical composition or the lyrics, provided that	Regulations 4 and 5	

	<p>the music and the lyrics were specifically created for the musical composition with words. It is clear from recitals (18) and (19) that this is intended to apply to musical compositions (for example an opera) where the composer writes the musical score and a librettist writes the libretto.</p>		
<p>Article 1(2)(a)</p>	<p>This Article distinguishes a fixation of a performance in a “phonogram” (where the rights are extended so as to expire 70 years from the date of the first publication or the first communication to the public, whichever is the earlier) from a fixation of a performance not contained in a phonogram (i.e. a film) (where the rights continue to expire after</p>	<p>Regulation 8</p>	

	50 years).		
Article 1(2)(b)	Extends the duration of copyright in sound recordings from 50 to 70 years.	Regulation 6	
Article 1(2)(c)2a	Provides that 50 years after the publication or communication to the public of a phonogram, a performer may terminate the contract under which he/she assigned his/her rights in the fixation of the recording to the producer if the producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means. The performer is required to give notice to the producer of his/her intention to terminate and may terminate the agreement if the producer fails to carry	Regulation 9 (inserting new section 191HA into the Act).	

	<p>out both acts of exploitation within a year of the notice. If the contract is terminated then the rights of the producer in the sound recording will expire. The right to terminate may not be waived by the performer. Where a sound recording contains the fixation of a plurality of performers the article provides that they may terminate their contracts in accordance with applicable national law.</p>		
<p>Article 1(2)(c)2b</p>	<p>Confers a right on a performer who has assigned his rights to the producer in consideration of a non-recurring payment to receive an annual payment with effect from the 50th year after the sound recording was lawfully published or</p>	<p>Regulation 9 (inserting new section 191HB into the Act).</p>	

	failing such publication the 50 th year after it was lawfully communicated to the public, which right may not be waived.		
Article 1(2)(c) 2c and 2d	Provides: (i) the amount of the annual payment which the producer must pay (20% of the annual revenue received in respect of the reproduction, distribution and making available of the sound recording) (paragraph 2c), (ii) that the annual payment must be administered by a collecting society (paragraph 2d), and (iii) that producers must provide on request to performers information necessary in order to secure payment of that remuneration (paragraph 2c).		
Article	Provides that	Regulation 9	

1(2)(c) 2e	where a performer is entitled to recurring payments then with effect from the 50 th year following publication of the sound recording, the performer is entitled to receive those payments free from any deductions.	(new section 191HB(9))	
Article 1(3)para.5	Provides that the extended term of protection for copyright in sound recordings and the extended period of term in relation to performers' rights together with the additional rights conferred on performers under the Directive will apply to sound recordings and fixations of performances which are still protected as at 1 November 2013 and to those fixations of performances and phonograms which come	Regulations 14 and 23	

	into being after that date.		
Article 1(3) paragraph 6 (first sub-paragraph)	Provides that the extended term of copyright which applies to works of co-authorship will apply to such works where either the music or the lyrics are protected in at least one Member State on 1 st November 2013 and to such works which come into being after that date.	Regulation 14	
Article 1(3) paragraph 6 (second sub-paragraph)	Entitles Member States to adopt "necessary provisions" to protect the acquired rights of third parties in relation to acts of exploitation carried out in relation to works comprised in a work of co-authorship before 1 st November 2013.	Regulations 19 and 21	
Article 1(4) first paragraph	Provides that in the absence of clear contractual indications to	Regulation 26	

	<p>the contrary, an assignment agreement between a performer and a producer entered into before 1st November 2013 will continue in force during the extended period of the performers' rights.</p>		
<p>Article 1(4) second paragraph</p>	<p>Provides a Member State option entitling Member States to make provision in relation to assignment contracts entered into before 1st November 2013 and which entitle a performer to recurring payments providing for their modification following the 50th year after the phonogram was published or communicated to the public.</p>	<p>Member state option not exercised and so there is no corresponding national provision</p>	
<p>Article 2(1)</p>	<p>Duty on Member States to adopt implementing legislation by</p>	<p>Regulation 1</p>	

	1 st November 2013		
Article 2(2)	Duty on Member States to communicate the text of the Regulations to the Commission following their adoption.	No transposition required	
Article 3	Reporting requirement directed at the Commission.	No transposition required.	
Article 4	Fixes the date of entry into force of the Directive	No transposition is required	
Article 5	Directive is addressed to Member States	No transposition is required	